

North Pacific Fishery Management Council

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Dr. William Hogarth
Assistant Administrator for Fisheries, NMFS
1315 East-West Highway
Silver Spring, MD 20910

Office of
Habitat Conservation

RE: Oceana petition for rulemaking on deep-sea coral and sponge habitat

Dear Dr. Hogarth:

Thank you for the opportunity to provide our comments regarding the most recent rulemaking petition submitted to the Secretary of Commerce by Oceana. As with the national bycatch petition in 2002, we strongly believe this is another inappropriate attempt to implement a sweeping array of fishery management regulations, through an abbreviated rulemaking process which circumvents the deliberative, public process mandated by the Magnuson-Stevens Act and the National Environmental Policy Act. In this case, we are further perplexed that Oceana petitioned NMFS to take this action when everything they are requesting is being considered through the regular process, and on a schedule mutually agreed upon by NOAA Fisheries, the Council, and Oceana. The North Pacific Council and NOAA Fisheries have prepared a Draft EIS for essential fish habitat (EFH), as required by the Court's ruling in *AOC v. Daley*, and pursuant to the schedule set forth in the Joint Stipulation, signed by Silvia Liu of Oceana on behalf of the plaintiffs. This petition appears to violate at least the spirit of that Joint Stipulation. I believe the comprehensive approach we are undertaking covers all aspects of the petition, so rather than address them point by point I will offer the following general comments.

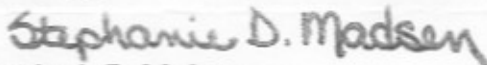
The alternatives considered in the North Pacific's EFH EIS, including one proposed by Oceana, were developed through a very deliberative and transparent public process. The alternative proposed by Oceana and analyzed in the Draft EIS was designed specifically to protect deep-sea coral and sponge habitats in the Aleutian Islands, and contains most of the provisions outlined in their rulemaking petition: mapping of corals and sponge areas, prohibition on bottom trawling in areas of coral and sponge communities, prohibition on bottom trawling in relatively unfished areas, bycatch limits for corals and sponges, a research and monitoring plan, and 100% observer coverage for all vessels fishing for groundfish. Concurrent with the EFH EIS, and also consistent with the Joint Stipulation, the Council has also initiated an environmental assessment of alternatives to identify and protect habitat areas of particular concern (HAPC) from potential impacts due to fishing. Specifically, the Council will consider designating hard coral beds, along with seamounts, as HAPC, and implementing very conservative measures (e.g., prohibit all bottom contact gear) to protect these areas. The Council is scheduled to take final action on the EFH EIS and the HAPC EA in February 2005.

To quote from our comments on the bycatch petition, which we believe apply equally in this case: "We believe that NMFS should deny the Oceana petition, and clarify that the appropriate avenue for such rulemaking is through the deliberative, public Council process under the Magnuson-Stevens Act...that the

agency appears to be embracing this petition process, by publishing the petition in the FEDERAL REGISTER and soliciting comment, sends an inappropriate message to the fishing industry and the public, denigrates the public process, and encourages the pursuit of rulemaking by petition, the results of which could be similar to rulemaking by litigation. If particular U.S. fisheries are not being managed responsibly with regard to coral and sponge protection or habitat conservation issues, those particular fisheries should be addressed through the existing process, including development of Secretarial amendments where necessary. However, we do not believe that an abbreviated, national level rulemaking approach is necessary or appropriate".

We appreciate your serious consideration of these comments.

Sincerely,



Stephanie D. Madsen
Chair

cc: Jim Balsiger, Alaska Regional Administer, NOAA Fisheries